IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1046 of 2007

Ahmed Ismail .. Petitioner

Vs

1. The State of Tamilnadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Government of Tamilnadu
   Fort St. George, Chennai-9.

2. The Commissioner of Police
   Chennai Police, Chennai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus calling for the records of the detention order under in BDFGISSV.No. 234/2007 dated 4.6.2007 passed by the Commissioner of Police, Chennai Police, Chennai, the Second Respondent herein and set aside the same and direct the Respondent to produce the detenu Ahamed Ismail Son of the Mohammed Yousuf now confined in Central Prison, Puzhal, Chennai before this Honble Court and set the detenu Mr. Ahmed Ismail at liberty.

For Petitioner : Mr.R.Balakrishnan
For Respondents: Mr.N.R.Elango
Additional Public Prosecutor

WEB COPY

ORDER

(Order of this Court was made by P.D.DINAKARAN,J.)

The petitioner calls in question legality of the order of detention 4.6.2007 passed by the second respondent ordering his detention under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982 (in short “the Act”) branding him as a "Video Pirate".

https://hcservices.ecourts.gov.in/hcservices/

2. The order of detention dated 4.6.2007 came to be passed based on the complaint lodged by one P.Balasubramanian before the Inspector of Police, Video Piracy Cell Unit I, Ayanavaram, Chennai-23. The complainant is an investigator of the South Indian Music Company Association. He received reliable information that pirated DVD/CDs of Tamil films, MP3 and obscene films are prepared with the help of CD writers at No.21/217, Puthu Nagar, 8th Street, Bharathi Nagar and violating the Copy Rights Act 1957 and requested to take action against the culprits. Based on his complaint, a case was registered in Crime No.69/2007 under Section 51, 52 (A), 63 and 68 of Copy Right Act and 292(2) of I.P.C. and after investigation, the detenu was arrested on 29.5.2007.

3. The second respondent, taking note of this case as a ground case and having satisfied that there is a compelling necessity to detain him in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Video Pirate.

4. The learned counsel for the petitioner challenges the impugned order of detention only on the ground of delay in preparing the rejection order.

5.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

5.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

5.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

5.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

5.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

6. Coming to the case on hand, admittedly, objecting to the order of detention dated 4.6.2007, a representation was made on behalf of the detenu on 23.6.2007, which was received by the Government on 25.6.2007. Remarks were called for from the detaining authority on 26.6.2007, which was received by the detaining authority on 27.6.2007. The detaining authority, in turn, called for parawar remarks from the sponsoring authority on 28.6.2007 and on receipt of the same on 29.6.2007, the detaining authority sent report to the Government on 2.7.2007 and the same was received on 4.7.2007. Thereafter, the file was submitted on 5.7.2007 and the same was considered by the Under Secretary and Additional Secretary on 6.7.2007. The file was considered by the Minister on 9.7.2007. However, the rejection letter was prepared on 16.7.2007, after a delay of seven days, which is not properly explained. Even taking note of the intervening holidays, viz., 14.7.2007 and 15.7.2007 (being Saturday and Sunday), the delay of five days in preparing the order of rejection, is admittedly unexplained and inexcusable. Thereafter, the order of rejection was sent on 17.7.2007 and served on the detenu on 18.7.2007.

WEB COPY

7. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The

https://hcservices.ecourts.gov.in/hcservices/

Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

8. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

9. In the instant case, there is delay of five days in preparing the order of rejection, as referred to above, and the same, in our considered opinion, vitiates the impugned order of detention. We are, therefore, inclined to allow this petition.

In the result, the order of detention dated 4.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   Prohibition and Excise Department
   Government of Tamilnadu
   Fort St. George, Chennai-9.
2. The Commissioner of Police
   Chennai Police, Chennai 600 008.
3. The Superintendent
   Central Prison,Chennai.
4. The Public Prosecutor
   High Court, Madras.
5. THE JOINT SECRETARY TO GOVT
   PUBLIC LAW & ORDER DEPT, HIGH COURT, MADRAS.

+ One cc to mr. R. Balakrishnan, Advoate sR 65514

NG (co)

sg 13/12/07

H.C.P.No.1046 of 2007
30.10.2007.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/